

### ***Residential accessory use***

means the use of a structure or premises that is customarily incidental and subordinate to the principal use of a residential structure. See *Use, principal*. Typical residential accessory uses are: carports and garages; decks, gazebos, patios, and screen enclosures; dock, personal (§ 34-1863); fences and walls (division 17 in article IV); garage sales or yard sales (see definition in this section); recreation facilities, personal; seawalls (ch. 26); and storage sheds. Division 2 and other portions of article IV provide regulations for many residential accessory uses.

***Setback*** means the minimum horizontal distance required between a specified line and the nearest point of a building or structure. See also "build-to" lines in § 34-662 and setback exceptions in § 34-638(d).

- (1) ***Street setback*** means the setback extending across the front of a lot measured from the edge of an existing street right-of-way or street easement. See definition of "*Lot line, front*" and § 34-638.
- (2) ***Side setback*** means the setback, extending from the required street setback to the required rear lot line, or opposing street setback in the case of a double-frontage lot, measured from the side lot line. There are two types of side setbacks, those applying to waterfront lots and those applying to non-waterfront lots. See definition of "*Lot line, side*" and § 34-638.
- (3) ***Rear setback*** means the setback, extending across the rear of a lot, measured from the rear lot line. See definition of "*Lot line, rear*" and § 34-638.
- (4) ***Water body setback*** means the setback measured from the mean high water line (MHWL), or the control elevation line if applicable, of a water body. See § 34-638.

### **Sec. 34-268. Administrative setback variances.**

(a) Upon written request using a form prepared by the director, the director is authorized to modify the setbacks in §§ 34-638, 34-1174-34-1176, and 34-1744 of this chapter under the following circumstances:

- (1) Street, rear, side, or waterbody setbacks may be modified to permit the remodeling of or additions to existing structures that are nonconforming with regard to a specific setback so long as the remodeling or addition will not result in:
  - a. An increase in the height of the structure; or
  - b. A further diminution of the setback. The director may approve bay windows, chimneys, and similar architectural features that may encroach further into the setback provided the encroachment does not protrude beyond the existing overhang of the building.
- (2) Street, rear, side, or waterbody setbacks may be modified to permit the construction of a handicapped access appurtenant to any existing structure.
- (3) Street, rear, side, or waterbody setbacks may be modified to allow the replacement of stairs or decking that provides access into an existing dwelling unit.
- (4) Street, rear, side, or waterbody setbacks may be modified to legitimize minor errors in setbacks at the time of construction.
- (5) Street, rear, or side setbacks may be modified for a residential lot with an unusual shape or orientation where, for instance, side and rear setbacks should be reversed.
- (6) Buildings or structures that are not in compliance with current setback regulations and which can be proven to have been permitted may also be reviewed by the director for consideration under this section.
- (7) Requirements for large satellite dishes may be modified as provided in § 34-1175(a)(6).

(b) The director, prior to approving the modifications, must make the following findings of fact:

- (1) There are no apparent deleterious effects upon the adjoining property owners;
- (2) The modifications will not have an adverse impact on the public health, safety, and welfare; and
- (3) The modifications will be the minimum required.

(c) Decisions by the director pursuant to this section are discretionary and may not be appealed in accordance with § 34-86.

## Sec. 34-634. Intensity and building coverage.

Another measure of building intensity used in this code is building coverage, which means the horizontal area of all principal and accessory buildings on a site divided by the site's lot area.

- (1) For purposes of this section, horizontal area means the area within the surrounding exterior walls (whether the walls are solid or screened). The term "horizontal area" does not include any area occupied by unroofed structures such as driveways, sidewalks, patios, outside stairways, or open swimming pools, and does not include any area whose roof is screened rather than solid such as swimming pool enclosures.
- (2) For purposes of this section, a site's lot area includes the gross square footage within the site's private property line, minus wetlands, canals, or other water bodies, and minus any land designated "Recreation" on the Comprehensive Plan's future land use map.

## Sec. 34-638. Minimum setbacks.

(a) *Generally.* Most zoning districts require minimum setbacks between all buildings and structures and the street, the side lot line, the rear lot line, and any water body.

- (1) Setbacks are minimum horizontal distances between a property line and the nearest point of all structures that ensure a minimum area without buildings. Detailed definitions are provided under "setback" in § 34-2.
  - a. Where an unusual lot configuration or orientation makes it unclear which property lines are street, side, or rear lot lines, the director will establish street, side, and rear lot lines for setback purposes after taking into account existing buildings on the same block as well as the intent of this code. Where access is provided by a shared driveway rather than a street, the director may determine that no street setback applies to that lot.
  - b. Once established through this process, the same setbacks will be applied by the director to other lots on that block.
- (2) There are two types of side setbacks:
  - a. *Side setbacks – waterfront lots.* Larger side setbacks are required for waterfront lots, defined as lots that immediately adjoin a tidally influenced body of water, whether artificial or natural (see definitions in § 34-2).

b. *Side setbacks – non-waterfront lots.*

Smaller side setbacks are required for all other lots.

- (3) The distinction between street setback lines and build-to lines is explained in § 34-662.
- (4) Certain exceptions to minimum setbacks are provided in subsection (d) below.

(b) *Where to find minimum setback dimensions.*

Minimum setback dimensions are specified as follows:

- (1) *For principal buildings:*
  - a. For all conventional zoning districts, see Table 34-3.
  - b. For redevelopment zoning districts, as described for the individual districts in division 5 of this chapter.
  - c. For RPD districts, see § 34-943.
  - d. For CPD districts, see § 34-953.
- (2) *For accessory buildings,* see §§ 34-1174–1176.

(c) *Additional wetlands buffers.* New development must maintain a 75-foot separation between wetlands and buildings or other impervious surfaces, in accordance with Policy 4-C-12 of the Fort Myers Beach Comprehensive Plan.

- (1) This requirement does not apply to lawfully existing subdivided lots
- (2) This requirement also does not apply to a previously approved development order to the extent it cannot reasonably be modified to comply with this requirement (see ch. 15 of the Fort Myers Beach Comprehensive Plan for details).

(d) *Exceptions to setback dimensions.* In addition to the following general exceptions to minimum setbacks, commercial buildings that are subject to the commercial design standards may encroach into certain setbacks as provided in § 34-991–1010.

(1) *Exceptions to all setbacks.*

- a. *Administrative setback variances.* Under certain limited circumstances, administrative variances can be granted to minimum setbacks as provided in § 34-268.
- b. *Overhangs.* An overhang which is part of a building may be permitted to encroach into any setback as long as the overhang does not extend more than three feet into the setback and does not permit any balcony, porch, or living space located above the overhang to extend into the setback.

- c. *Shutters.* A shutter which is attached to a building may be permitted to encroach one foot into the setbacks.
- d. *Awnings and canopies.*
  - 1. Awnings and canopies which are attached to a building may be permitted to encroach three feet into the setbacks, as long as their location does not interfere with traffic, ingress and egress, or life safety equipment.
  - 2. For purposes of this section, awnings and canopies may be attached to a nonconforming building and shall not be considered an extension or enlargement of a nonconformity, as long as the building is properly zoned for its use and the conditions as set forth in this section are met.
- e. *Essential services.* Essential services and essential service equipment shall not be required to meet the minimum setbacks for the district wherein located (see § 34-1617).
- f. *Two-family dwelling units.* If a two-family dwelling unit is on a lot of sufficient size to allow it to be subdivided into a separate lot under each dwelling unit (see Table 34-3), the side setback regulations in this section shall not be interpreted to forbid such subdivision. Existing two-family buildings that are being subdivided must be separated by not less than 1-hour fire resistance.
- g. *Mechanical equipment.* Mechanical equipment such as air conditioners may encroach up to three feet into rear and water body setbacks but must meet the same street and side setbacks as the building it serves. These requirements apply to new buildings and to new mechanical equipment but will not apply to replacement of mechanical equipment on existing buildings if the equipment was installed in conformance with prior regulations.

(2) **Exceptions to street setbacks.**

Certain structures are exempt from the street setback requirements as follows. See also § 34-1174.

- a. *Build-to lines.* Some zoning districts do not have any street setback requirements but instead have build-to lines, as described in § 34-662. Awnings, canopies, balconies, bay windows, porches, stoops, arcades, and colonnades may extend forward of the build-to line provided that they comply with the commercial design standards (see § 34-995(e)).

- b. *Porches, balconies, and stoops.* Porches, balconies, and stoops may extend up to 10 feet into the street setback zone of residential buildings, provided that:
  - 1. Any walls, screened areas, or railings in the setback zone extend no higher than 42 inches above the floor of the porch, balcony, or stoop; and
  - 2. No portion of a porch or balcony and no walls or screened areas may be closer than 10 feet to the edge of any street right-of-way or street easement.
- c. *Mail and newspaper delivery boxes.* Mail and newspaper delivery boxes may be placed in accordance with U.S. Postal Service regulations; however, the support for a mail or newspaper delivery box must be of a suitable breakaway or yielding design, and any mail or newspaper delivery box placed in an unsafe or hazardous location can be removed by the government agency with jurisdiction over the right-of-way at the property owner's expense.
- d. *Bus shelters, bus stop benches, and bicycle racks.* Bus shelters, bus stop benches, and bicycle racks may be located in any district without regard for minimum setbacks, provided the location of the structure is approved by the town manager. No advertising is permitted on bus stop benches.
- e. *Telephone booths.* Telephone booths and pay telephone stations may be located in any zoning district that permits multifamily or commercial uses without regard for minimum setbacks, provided that the location shall be approved by the director.

(3) **Water body setbacks.**

- a. *Gulf of Mexico.* Except as provided in this section or elsewhere in this code, no building or structure shall be placed closer to the Gulf of Mexico than set forth in ch. 6, articles III and IV, or 50 feet from mean high water, whichever is the most restrictive. See also special regulations for the EC zoning district in § 34-652 and the coastal zone restrictions in § 34-1575.
- b. *Other bodies of water.* Except as provided in this section or elsewhere in this chapter, no building or structure shall be placed closer than 25 feet to a canal or to a bay or other water body. For purposes of measuring setbacks from a canal, bay, or other body of water, the following will be used:

1. If the body of water is subject to tidal changes and the property does not have a seawall, the setback will be measured from the mean high water line.
2. If the body of water is not subject to tidal changes and the property does not have a seawall, the setback will be measured from the control elevation of the body of water if known, or from the ordinary high water line if unknown.
3. If the property has a seawall, the setback will be measured from the seaward side of the seawall, not including the seawall cap.

c. *Exceptions for certain accessory structures.*

Certain accessory buildings and structures may be permitted closer to a body of water as follows:

1. *Fences and walls.* See division 17 of this article.
2. *Shoreline structures.* See § 34-1863 and ch. 26.
3. *Nonroofed structures.* Swimming pools, tennis courts, patios, decks, and other nonroofed accessory structures or facilities which are not enclosed, except by fence, or which are enclosed on at least three sides with open-mesh screening from a height of 3½ feet above grade to the top of the enclosure, shall be permitted up to but not closer than:
  - a- Five feet from a seawalled canal or seawalled natural body of water;
  - b- Ten feet from a nonseawalled artificial body of water; or
  - c- Twenty-five feet from a nonseawalled natural body of water;
 whichever is greater. Enclosures with any two or more sides enclosed by opaque material shall be required to comply with the setbacks set forth in subsections (d)(3)a. and (d)(3)b. of this section.

4. *Roofed structures.*

- a- Accessory structures with roofs intended to be impervious to weather and which are structurally built as part of the principal structure shall be required to comply with the setbacks set forth in subsections (a) and (b) of this section.
- b- Accessory structures with roofs intended to be impervious to weather and which are not structurally built as part of the principal structure may be permitted up to but not closer than 25 feet to a natural body of water, and ten feet to an artificial body of water.

(4) *Exceptions for certain nonconforming lots.*

- a. Certain nonconforming *residential* lots are subject to the modified side and rear setback requirements that are found in § 34-3273.
- b. Certain nonconforming *mobile home* lots in the VILLAGE zoning district are subject to the modified side and rear setback requirements that are found in § 34-694.
- c. Certain nonconforming *commercial* lots are subject to the modified side and rear setback requirements that are found in § 34-3277.

**Table 34-3 — Dimensional Regulations in Conventional Zoning Districts**

ZONING DISTRICT	Setbacks (see § 34-638 for explanation and exceptions)						Lot size (see § 34-637 for explanations and exceptions)			F.A.R. § 34-633	Building Coverage § 34-634	Density § 34-632	Height (see § 34-631)	
	street	side-waterfront lot	side-non-waterfront	rear	water body (1)	Gulf of Mexico (2)	area	width	depth				feet	stories
<b>RS Residential Single-family</b>	25	7.5 (8)	7.5 (8)	20	25	50	7,500	75	100	—	40%	(3), (4)	25	3
<b>RC Residential Conservation</b>	25	7.5	7.5	20	25	50	4,000	45	80	—	40%	(3), (4), (5)	25	3
<b>RM Residential Multifamily</b>	25	20 (6)	20 (6)	20	25	50	7,500	75	100	1.2	—	(3), (4), (5)	30	3
<b>CR Commercial Resort</b>	10	20	15	20	25	50	20,000	100	100	1.2	—	(3)	30	3
<b>CM Commercial Marina</b>	20	20	20	20	0	50	20,000	100	100	1.0	—	—	35	3
<b>CO Commercial Office</b>	10	10	7	20	25	50	7,500	75	100	1.2	—	(3), (4), (5)	30	3
<b>SANTOS</b>	10	7	5	20	25	50	5,000	50	100	0.6	—	(3), (4), (5)	25	3
<b>IN Institutional</b>	20	10	7	20	25	50	7,500	75	100	0.8	—	(3)	35	3
<b>CF Community Facilities</b>	20	15	10	20	25	50	N/A	N/A	N/A	0.1	—	(3)	35	3
<b>BB Bay Beach</b>	— see § 34-651(b) —													
<b>EC Environmentally Critical</b>	20	25	—	25	20	50	(7)	N/A	N/A	.01	—	(3), (7)	25	2
<p><i>Note (1): An additional wetland buffer is required for new development; see § 34-638(c).</i></p> <p><i>Note (2): See § 34-638(d)(3)a.</i></p> <p><i>Note (3): Maximum densities are established by the Fort Myers Beach Comprehensive Plan; see § 34-632.</i></p> <p><i>Note (4): Accessory apartments are allowed in owner-occupied homes under certain conditions; see § 34-1178.</i></p> <p><i>Note (5): A second dwelling unit or accessory apartment may be allowed on larger lots; for details, see §§ 34-632, 34-1177, and 34-1178.</i></p> <p><i>Note (6): Single-family and two-family homes on waterfront lots in the RM zoning district must maintain only a 7.5-foot side setback.</i></p> <p><i>Note (7): See § 34-652(e)(3).</i></p> <p><i>Note (8): For all RS lots fronting on Matanzas Street and Matanzas Court, all side setbacks shall be at least 10 feet.</i></p>														

## **DIVISION 2. ACCESSORY USES, BUILDINGS, AND STRUCTURES**

### **Sec. 34-1171. Applicability of division.**

This division provides minimum regulations for those accessory uses, buildings, and structures customarily incidental and subordinate to the principal use or building, which are not specifically regulated elsewhere in this code.

### **Sec. 34-1172. Definitions.**

For purposes of this division only, certain words or terms shall mean the following:

*Accessory use* means a use of a structure or premises which is customarily incidental and subordinate to the principal use of the structure or premises.

*Commercial accessory use* means the use of a structure or premises that is customarily incidental and subordinate to the principal use of a commercial structure or premises. See *Use, principal*. Typical commercial accessory uses are: *Parking lots, accessory; Storage, indoor; and Telephone booth or pay telephone station*. Various divisions of article IV of this chapter describe permitted commercial accessory uses. Uses that are listed separately on Table 34-1 of this code, such as drive-throughs and automobile fuel pumps, are not commercial accessory uses and are permitted only in zoning districts where they are explicitly identified in Tables 34-1 and 34-2.

*Open-mesh screen* means meshed wire or cloth fabric to prevent insects from entering the facility, including the structural members framing the screening material.

*Residential accessory use* means the use of a structure or premises that is customarily incidental and subordinate to the principal use of a residential structure. See *Use, principal*. Typical residential accessory uses are: carports and garages; decks, gazebos, patios, and screen enclosures; dock, personal (§ 34-1863); fences and walls (division 17 in article IV); garage sales or yard sales (§ 34-2); recreation facilities, personal; seawalls (ch. 26); and storage sheds. Division 2 and other portions of

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article IV provide regulations for many residential accessory uses.

*Resort accessory use* means the use of a structure or premises that is customarily incidental and subordinate to a resort. See *Use, principal*. Typical resort accessory uses are: *Amusement devices* (§§ 34-2141–2145 and 34-3042); *Golf courses*; *Parasailing operations office* (ch. 27); *Personal watercraft operations office* (ch. 27); and *Rental of beach furniture* (ch. 14).

*Roofed* means any structure or building with a roof which is intended to be impervious to weather.

### Sec. 34-1173. Development regulations.

(a) Unless specifically indicated to the contrary, accessory uses and related buildings and structures that are customarily recognized as clearly incidental and subordinate to the principal use of the property are permitted by right when located on the same lot or parcel and in the same zoning category as the principal use, provided that:

- (1) Uses that are listed separately on Table 34-1 of this code, such as drive-throughs and automobile fuel pumps, are not accessory uses and are permitted only in zoning districts where they are explicitly identified in Tables 34-1 and 34-2. However, this limitation does not apply to uses that are explicitly listed in the definitions of residential, commercial, or resort accessory uses.
- (2) All uses, buildings, and structures must comply with all applicable development regulations and building codes.
- (3) Accessory buildings or structures may be built concurrently with a principal building or structure but, except as provided herein, no accessory use, building, or structure shall be commenced, erected, placed, or moved onto a lot or parcel prior to the principal use, building, or structure. Exceptions are as follows:
  - a. Fences or walls when in compliance with division 17 of this article.
  - b. Seawalls or retaining walls (see § 26-43(a)).

c. Docks accessory to residential uses (see § 26-43(a)). Only permitted if the lot meets the minimum lot size and dimensions required for a principal use.

(b) *Attachment to principal building*. Authorized accessory buildings or structures may be erected as part of the principal building or may be connected to it by a roofed porch, patio, or breezeway, or similar structure, or they may be completely detached, provided that:

- (1) Any accessory building or structure which is structurally a part of the principal building shall comply in all respects with the regulations for a principal building.
- (2) Any accessory building or structure not structurally made a part of the principal building shall comply with the location requirements set forth in § 34-1174.

### Sec. 34-1174. Location and setbacks generally.

(a) *Permitted locations*. Except as may be provided elsewhere in this chapter, all accessory uses, buildings, and structures must be located on the same premises and must have the same zoning district or zoning classification as the principal use (see also § 34-616(b)). For purposes of this section, a zoning classification contains the following groups of zoning districts:

- (1) Residential districts – RS, RC, RM, and SANTOS – described in article III of this chapter: and
- (2) Commercial districts – CR, CM, CO, and CB – described in article III of this chapter.

(b) *Setback from streets*. No accessory use, building, or structure shall be located closer to a street right-of-way line or street easement than the principal building, except for:

- (1) fences and walls as provided for in division 17,
- (2) signs, where permitted by ch. 30 and placed in accordance with §§ 30-93 and 30-153,
- (3) outdoor display of merchandise, subject to the provisions of division 36 of this article,
- (4) garbage enclosures as provided for in § 6-11,
- (5) a single flagpole on a lot,
- (6) swimming pools, tennis courts, shuffleboard courts, and other similar recreation facilities

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that are accessory to a multiple-family development, or a hotel/motel, provided that they are part of a planned development or a site plan approved in accordance with ch. 10 and provided they comply with the minimum setbacks for streets,

- (7) as provided for in the exceptions to setbacks in § 34-638(d), or
- (8) on through lots, accessory uses, buildings, and structures may be placed closer to the street opposite the street that provides principal vehicular access than the principal building as long as the minimum setbacks for streets as set forth in § 34-638 are maintained.

(c) **Setback from bodies of water.** No building or structure (except marine structures, which are subject to the setback requirements as set forth in ch. 26, article II) may be located closer to a bay, canal, or other body of water than the minimum setbacks required in § 34-638(d)(3).

(d) **Setbacks from side and rear property lines.** Unless the side or rear property line abuts a body of water (see § 34-638(d)), the following setbacks shall apply:

- (1) **Residential accessory buildings and structures.** Except as provided in §§ 34-1175 and 34-1176, all accessory residential buildings and structures shall be set back a minimum of:
  - a. Five feet from any rear property line that does not have access to an alley.
  - b. Zero feet from any rear property line that is served by an alley.
  - b. For non-waterfront lots, five feet from any side property line.
  - c. For waterfront lots, the same distance as is required from any side property line for principal buildings in that zoning district (see § 34-638).
- (2) **Commercial and resort accessory buildings and structures.** All accessory buildings and structures for a principal commercial or resort use shall be set back:
  - a. In accordance with the side and rear setback requirements for a principal building in that zoning district or the

minimum buffering requirements as set forth in ch. 10, whichever is greater, when abutting any district other than commercial or resort.

- b. When abutting another commercial or resort zoning district:
  - 1. Rear setbacks are not required.
  - 2. For non-waterfront lots, side setbacks are not required.
  - 3. For waterfront lots, the same distance as is required from any side property line for principal buildings in that zoning district (see § 34-638).

(e) **Administrative setback variances.** Under certain limited circumstances, administrative variances can be granted to minimum setbacks as provided in § 34-268.

(f) **Prohibited locations.** Nothing contained in this chapter shall be construed as permitting placement of any accessory building or structure within a utility or other easement prohibiting such building or structure, or closer to adjacent property than permitted by the minimum buffer requirements set forth in ch. 10, or closer to any other building than permitted by the town building code.

(g) **Fences.** Fences are subject to the setback requirements in division 17 of this chapter.

### Sec. 34-1175. Satellite dishes and amateur radio antenna/towers.

(a) **Satellite dishes.** The following restrictions apply to satellite dishes that are installed as accessory structures if the dishes exceed two meters (78.74 inches) in diameter in zoning districts that allow Retail/Open or Lodging/Open land use sub-groups (see Table 34-2) or if the dishes exceed one meter (39.37 inches) in diameter in all other zoning districts.

- (1) **Setbacks.** Satellite dishes must meet the minimum requirements for accessory structures in § 34-1174(b)-(d).
- (2) **Allowable size.** No satellite dish may exceed ten feet in diameter.



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### (3) Location and placement.

- a. Except as provided below, satellite dishes may not be mounted on a roof or on any other building surface.
- b. *Exception.* Satellite dishes may be mounted on buildings that exceed 35 feet in height (as measured in accordance with § 34-631(b)), provided the satellite dish is not visible at ground level from any abutting right-of-way, street easement, or any property under separate ownership and zoned or used for residential purposes.

### (4) Height. Ground-mounted satellite dishes may not exceed ten feet in height.

### (5) Landscaping. Ground-mounted satellite dishes exceeding two meters (78.74 inches) in diameter must include a landscaped buffer of at least three feet in width between the facility and any right-of-way or ingress/egress or access easement. The buffer must be at least four feet in height at installation and be maintained at a minimum of five feet in height within one year after time of planting.

### (6) Administrative variances. The director may modify requirements of subsection (a) where an applicant can demonstrate in writing that full compliance with these provisions will materially limit transmission or reception with the proposed satellite dish. See § 34-268. The director may not modify any requirement to a greater extent than is required to ensure that transmission or reception is not materially limited.

### (b) Amateur radio antenna/towers.

- (1) Amateur radio antenna/towers up to 50 feet in height are permitted in all zoning districts provided that antenna/tower supports and peripheral anchors are located entirely within the boundaries of the property and in the rear or side yard.
- (2) Amateur radio antenna/towers over 50 feet in height may be permitted by special exception in any zoning district.

## Sec. 34-1176. Swimming pools, tennis courts, porches, decks, and similar recreation facilities.

(a) *Applicability.* The regulations set out in this section apply to all swimming pools, tennis courts, shuffleboard courts, porches, decks, and other similar recreation facilities which are accessory to a permitted use, and which are not specifically regulated elsewhere in this chapter.

### (b) Location and setbacks.

#### (1) Personal, private, and limited facilities.

- a. *Nonroofed facilities.* All swimming pools, tennis courts, decks, and other similar nonroofed accessory facilities shall comply with the following setback requirements:

1. Street setbacks as set forth in §§ 34-1174(b) and 34-638.
2. Water setbacks as set forth in § 34-638(d)(3).
3. Rear lot line setback as set forth in § 34-1174(d).
4. Side lot line setbacks as set forth in § 34-1174(d).

- b. *Open-mesh screen enclosures.* Swimming pools, patios, decks, and other similar recreation facilities may be enclosed with an open-mesh screen enclosure provided that the enclosure complies with the setback requirements set forth in § 34-1174, and provided further that:

1. At least three sides of the enclosure are open-mesh screening from a height of 3½ feet above grade to the top of the enclosure.
2. Enclosures with any two or more sides enclosed by opaque material shall be required to comply with all setbacks required for a principal building.

It shall be the responsibility of the applicant to increase all required setbacks sufficient to provide maintenance access around the pool whenever the pool is proposed to be enclosed with open-mesh screening or fencing. A minimum increase in setbacks of three feet is recommended.

- c. *Roofed open-mesh enclosures.* Open-mesh screen enclosures may be covered by a solid roof (impervious to weather) provided that:

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1. If structurally part of the principal building, the enclosure shall comply with all setback requirements for the principal building.
  2. Except when in compliance with the setback requirements for principal buildings, a solid roof over a screen enclosure shall be constructed as a flat roof with the pitch no greater than the minimum required for rain runoff.
- (2) **Commercial and public facilities.** All pools, tennis courts, and other similar recreation facilities owned or operated as a commercial or public establishment shall comply with the setback regulations for the zoning district in which located.
- (c) **Fencing.**
- (1) **In-ground swimming pools, hot tubs, and spas.** Every swimming pool, hot tub, spa, or similar facility shall be enclosed by a fence, wall, screen enclosure or other structure, not less than four feet in height, constructed or installed so as to prevent unauthorized access to the pool by persons not residing on the property. For purposes of this subsection, the height of the structure shall be measured from the ground level outside of the area so enclosed. The enclosure may be permitted to contain gates, provided they are self-closing and self-latching.
  - (2) **Aboveground swimming pools, hot tubs, and spas.** Aboveground pools, hot tubs, spas, and similar facilities shall fulfill either the enclosure requirements for in-ground pools or shall be so constructed that the lowest entry point (other than a ladder or ramp) is a minimum of four feet above ground level. A ladder or ramp providing access shall be constructed or installed so as to prevent unauthorized use.
  - (3) **Exception.** A spa, hot tub, or other similar facility which has a solid cover (not a floating blanket) which prevents access to the facility when not in use shall be permitted in lieu of fencing or enclosure requirements.
  - (4) **Tennis courts.** Fences used to enclose tennis courts shall not exceed 12 feet in height above the playing surface.
- (d) **Lighting.** Lighting used to illuminate a swimming pool, tennis court, or other recreation facility shall be directed away from adjacent properties and streets, and shall shine only on the subject site.
- (e) **Commercial use.** No swimming pool, tennis court, or other recreation facility permitted as a residential accessory use shall be operated as a business.

## Fences and Walls

### Sec. 34-1744. Location and height of fences and walls.

(a) **Setbacks.** Except as may be specifically permitted or required by other sections of this chapter or chapter 10, no fence or wall, excluding seawalls, shall be erected, placed, or maintained:

- (1) Within any street right-of-way or street easement, or closer than 3 feet to any sidewalk or bike path or to the right-of-way of Estero Boulevard.
- (2) Closer to the Gulf of Mexico than permitted by ch. 6, article III.
- (3) Closer than five feet to the mean high-water line along natural water bodies, including canals created from sovereign lands, except that, where the canal is seawalled, the fence may be built immediately landward or on top of the seawall.

(b) **Height.** The maximum height for fences and walls, measured from the existing elevation of the abutting property, is illustrated in Figure 34-29 and described as follows:

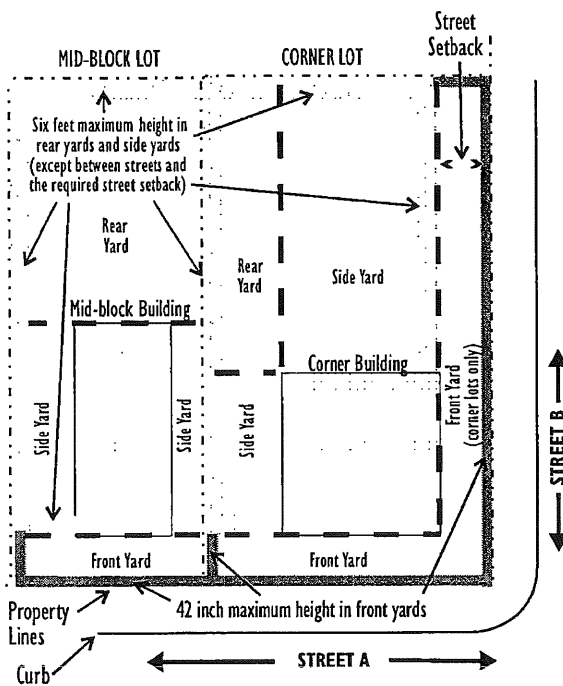


Figure 34-30

- (1) **Front yards.** Any fence or wall located in a front yard (between a street right-of-way or easement and the minimum required street setback or build-to line) shall not exceed 42 inches in height, except as provided in subsection 34-1744(b)(4) below. This division does not excuse any fence wall from compliance with any lesser height required to meet vehicle visibility requirements (see § 34-3131) at traffic access points.
- (2) **Side and rear yards.** Any fence or wall located in a side or rear yard shall not exceed six feet in height.
  - a. For purposes of this requirement, the side yard does not include any portion of the lot between a street and the minimum required street setback or build-to line.
  - b. Where a side or rear yard slopes downward from the street, a fence may be up to seven feet above the elevation of the abutting property to avoid unnecessary variations in the height of a fence.
- (3) **Near water bodies.** Within 25 feet of a body of water, those portions of a fence that exceed 42 inches in height cannot be more than 25% opaque (as viewed from perpendicular to the fence).
- (4) **Exceptions:**
  - a. **Architectural features.** Fences and walls may include occasional architectural features such as columns, posts, gates, and arbors at a height not exceeding 84 inches. All such features must be visually compatible with the fence or wall design.
  - b. **Administrative setback variances.** Under certain limited circumstances, administrative variances can be granted to minimum setbacks as provided in § 34-268.
  - c. **Enclosure of high-voltage transformers.** See § 34-1748.
  - d. **Screening of refuse containers.** On sites where the location and configuration of existing structures and vehicle use areas prevent the placement of refuse containers outside the front yard, fences and/or walls erected for the sole purpose of providing reasonable screening of refuse containers located in a front yard may exceed 42 inches in height, but must not exceed six feet in height.

## **DIVISION 30. RECREATION FACILITIES**

### **Sec. 34-2141. Applicability**

(a) The regulations set forth in this division for recreation facilities are in addition to any other applicable regulations. In the case of conflict, the most restrictive regulations shall apply.

(b) This chapter defines five types of recreation facilities (see § 34-2):

- (1) *Recreation facilities, commercial*, which are permitted by special exception in certain zoning districts.
- (2) *Recreation facilities, personal*, which are considered to be residential accessory uses.
- (3) *Recreation facilities, private ON-SITE*, which are permitted by right in certain zoning districts.
- (4) *Recreation facilities, private OFF-SITE*, which are permitted by special exception in certain zoning districts.
- (5) *Recreation facilities, public*, which are permitted by right in certain zoning districts.

(c) This chapter also defines *Park, neighborhood* and *Park, community or regional* (see § 34-2), both of which are permitted by right in certain zoning districts.

### **Sec. 34-2142. Minimum lot area and setbacks.**

(a) All recreation facilities, whether a principal use or accessory use, shall be located on property meeting the minimum lot size and dimensions of the zoning district in which located as well as any additional area, width, or depth required to permit full compliance with all setbacks, ground cover, open space, buffering, drainage, and parking requirements as set forth in this chapter or ch. 10, whichever is most applicable.

(b) Minimum setbacks for uses subject to this division are as set forth in the property development regulations of the zoning district in which located.

(c) Additional setback requirements for specific uses are as follows:

- (1) *Recreation facilities, commercial*.  
Amusement devices, water slides, miniature golf, and other commercial recreation

facilities shall be located not less than 50 feet or a distance equal to the height of the structure or device, whichever is greater, from any property under separate ownership, provided further that such setback shall be 100 feet from any adjacent property with residential zoning or any existing residential use.

- (2) *Recreation halls*. Recreation halls and ancillary facilities and membership organizations shall be located at least 40 feet from any residential dwelling and situated in a manner so as to encourage pedestrian and bicycle traffic.
- (3) *Other facilities*. Other facilities are specifically regulated elsewhere in this code, such as swimming pools and tennis courts in division 2 of this article.

### **Sec. 34-2143. Accessory uses.**

(a) Accessory uses, buildings, or structures for recreation facilities which are customarily incidental to the principal use may be permitted. Such uses include but are not limited to restroom facilities, maintenance sheds, refreshment stands (with no alcoholic beverages unless approved in accordance with division 5 of this article), pro shops (where applicable), and administrative offices.

(b) Food and beverage service is permitted in any recreation hall; provided, however, no alcoholic beverages shall be distributed or consumed on the premises except in compliance with division 5 of this article.

### **Sec. 34-2144. Lighting.**

Artificial lighting used to illuminate the premises of recreation facilities shall be directed away from adjacent properties and streets.

### **Sec. 34-2145. Sound systems.**

Sound systems shall meet the requirements of the town's noise control ordinance, Ordinance No. 96-24 as may be amended from time to time.

**Sec. 34-3005. Storage facilities.**

**(a) *Indoor storage.***

- (1) *Permitted districts.* Except for warehouses and mini-warehouses, indoor storage is permitted within any zoning district when accessory to the permitted principal use of the property. Warehouses and mini-warehouses are permitted only in zoning districts for which it is specifically stated that such uses are permitted.
- (2) *Setbacks.* All buildings used for indoor storage which are located on the same lot as the principal building shall comply with the setback requirements for accessory buildings. Buildings used for indoor storage which are not on the same lot as the principal building, but are on the same premises, shall meet the setbacks set forth in the district regulations for principal buildings.

**(b) *Open storage.***

- (1) *Fencing and screening.* All commercial outdoor storage shall be shielded behind a continuous visual screening at least eight feet in height when visible from a residential use or residential zoning district, and six feet in height when visible from any street right-of-way or street easement.
- (2) *Storage area.* Storage areas do not need to be paved. Grass or other ground cover may be used provided it is kept in a sightly and dustfree manner.

**(c) *Use of vehicles, truck trailers, or shipping containers for storage.*** Vehicles, truck trailers, shipping containers, and other similar structures may not be used to store goods, produce, or other commodities except in conjunction with an active building permit or development order (see § 34-3044) or unless approved on a temporary basis in accordance with § 34-3041.

**(d) *Bulk storage of flammable liquids.***

- (1) *Firewalls or dikes required.* Whenever aboveground tanks for storage of gasoline, gas, oil, or other flammable liquids are located on any land where such use is permitted, such tanks shall be surrounded by an unpierced firewall or dike of such height and dimensions as to contain the maximum capacity of the tanks. All storage tanks and adjacent structures shall meet the requirements of the Board of Fire Underwriters.
- (2) *Exceptions.* Storage tanks containing liquified petroleum, commonly known as bottled gas, are specifically excluded from the provisions of this subsection.

# FORT MYERS BEACH LAND DEVELOPMENT CODE

## CHAPTER 26 MARINE FACILITIES<sup>1</sup>

### ARTICLE I. IN GENERAL

*Sec. 26-1. Enforcement and penalties.*  
*Secs. 26-2--26-40. Reserved.*

### ARTICLE II. SEAWALLS, DOCKS, AND OTHER SHORELINE STRUCTURES

#### Division 1. Generally

*Sec. 26-41. Definitions.*  
*Sec. 26-42. Reserved.*  
*Sec. 26-43. Applicability.*  
*Sec. 26-44. Compliance with other applicable regulations.*  
*Sec. 26-45. Permits required.*  
*Sec. 26-46. Variances.*  
*Sec. 26-47. Exemption from setback requirement.*  
*Sec. 26-48. Nonconforming marine structures.*  
*Secs. 26-49--26-70. Reserved.*

#### Division 2. Location and Design

*Sec. 26-71. Docks and boat ramps.*  
*Sec. 26-72. Boat lifts and davits.*  
*Sec. 26-73. Fishing piers or observation decks.*  
*Sec. 26-74. Boathouses.*  
*Sec. 26-75. Seawalls and retaining walls generally.*  
*Sec. 26-76. Seawalls and retaining walls along artificial water bodies.*  
*Sec. 26-77. Seawalls and retaining walls along natural water bodies.*  
*Sec. 26-78. Riprap revetment.*  
*Sec. 26-79. Protection of vegetation during construction.*  
*Sec. 26-80. Turbidity.*  
*Sec. 26-81. Marina design and location.*

<sup>1</sup>Cross reference(s)—Coastal construction code, § 6-331 et seq.; wetlands protection, § 14-291 et seq; mangrove enforcement, § 14-451 et seq.; zoning regulations pertaining to marine facilities, § 34-1861 et seq.

*Sec. 26-82. Dredging, new and maintenance.*  
*Secs. 26-83--26-110. Reserved.*

### ARTICLE III. MARINE SANITATION

*Sec. 26-111. Purpose.*  
*Sec. 26-112. Reserved.*  
*Sec. 26-113. Reserved.*  
*Sec. 26-114. Applicability.*  
*Sec. 26-115. Discharge of waste material prohibited.*  
*Sec. 26-116. Marina sanitation facilities.*

### ARTICLE I. IN GENERAL

**Sec. 26-1. Enforcement and penalties.**

The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this chapter.

**Secs. 26-2--26-40. Reserved.**

### ARTICLE II. SEAWALLS, DOCKS, AND OTHER SHORELINE STRUCTURES

#### DIVISION 1. GENERALLY

**Sec. 26-41. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

**Access walkway** means the portion of a structure that allows access to a dock or terminal platform.

**Boathouse** means a roofed structure constructed over or adjacent to water to provide a covered mooring or storage place for watercraft.

**Boat ramp** means an inclined and stabilized surface that extends into the water from the shore and upon which trailerable watercraft can be launched and retrieved.

**Director** means the person to whom the town manager has delegated the authority to administer this chapter, or that person's designee.

**Dock** means a structure designed primarily for the launching, retrieval, storage, or mooring of watercraft.

**Exterior property line** means the side lot line or riparian property line separating two or more lots or parcels under common ownership from the adjoining lots or parcels under separate ownership.

**Finger pier** means a dock landing that branches from an access walkway or terminal platform to form a slip and provides direct access to watercraft moored in the slip.

**Hazard to navigation** means a structure erected or under construction, or a moored watercraft, which obstructs the navigation of watercraft proceeding along a navigable channel or canal, or which obstructs reasonable riparian access to adjacent properties.

**Invasive exotic vegetation** means Australian pine (*Casuarina spp.*), Brazilian pepper (*Schinus terebinthifolius*), paper or punk tree (*Melaleuca quinquenervia*), and earleaf acacia (*Acacia auriculiformis*).

**Mangrove** means any specimen of the species black mangrove (*Avicennia germinans*), white mangrove (*Laguncularia racemosa*), or red mangrove (*Rhizophora mangle*).

**Marginal dock** means a dock that runs parallel and adjacent to the shoreline. This term includes docks with a maximum access walkway length of 25 feet to a dock running parallel to the shoreline and adjacent to wetland vegetation.

**Marina** has the meaning provided in § 34-2.

**Mean high water** means the average height of the high waters over a nineteen-year period. For shorter periods of observation, "mean high water" means the average height of the high waters after corrections are applied to eliminate known variations and to reduce the result to the equivalent of a mean nineteen-year value.

**Mean high-water line** means the intersection of the tidal plane of mean high water with the shore.

**Mean low water** means the average height of the low waters over a nineteen year period. For shorter periods of observation, "mean low water" means the average height of the low waters after corrections are applied to eliminate known variations and to reduce the result to the equivalent of a mean nineteen-year value.

**Multi-slip dock** means two or more docks which will provide vessel mooring slips to unrelated individuals, either for rent or for sale. A multi-slip dock is distinguished from a marina in that no commercial activity is associated with a multi-slip dock.

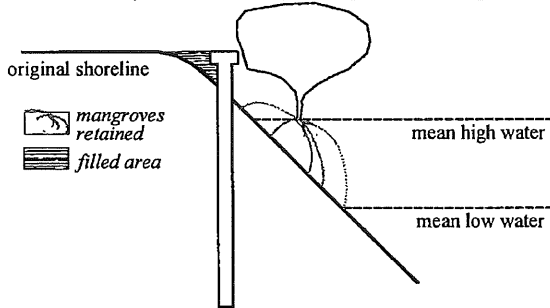
**Navigable channel** means the area within a natural or artificial water body that will allow passage of a watercraft drawing three feet of water at mean low water.

**Nonconforming marine structure** means any type of structure permitted by this chapter which was lawful prior to the adoption of any ordinance from which this chapter is derived, or the adoption of any revision or amendment to this chapter, but which fails, by reason of such adoption, revision, or amendment, to conform to specific requirements of this chapter.

**Private single-family dock** means a dock designed and intended to serve as an accessory use to an existing or proposed single-family dwelling unit.

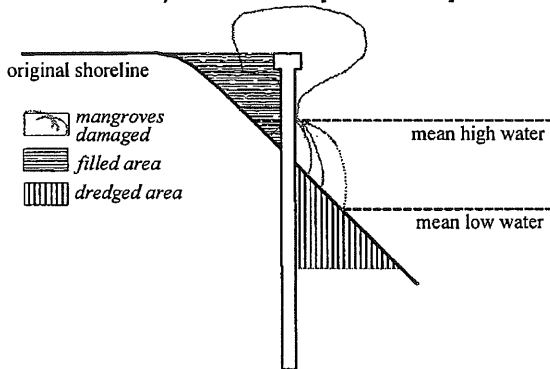
**Retaining wall** means a vertical bulkhead constructed landward of the mean high-water line and landward of wetland vegetation to protect the shoreline from erosion.

Example of retaining wall [not to scale]:



**Seawall** means a vertical bulkhead constructed seaward of the mean high-water line or seaward of the upper reaches of wetland vegetation.

Example of seawall [not to scale]:



**Slip** means that part of a structure and adjoining tie-up area designed to moor a single watercraft.

**Structure** refers to a water-oriented facility and includes any dock, boardwalk, floating dock, fishing pier, pier, wharf, observation deck, deck, platform, boathouse, mooring piling, riprap, revetment, seawall, bulkhead, retaining wall, jetty, platform, boat lift, davit, or boatramp, or any other obstacle, obstruction, or protrusion used primarily for the landing, launching, or mooring of watercraft, erosion control and shoreline stabilization, or for water-oriented activities.

**Terminal platform** means the part of a dock connected to and generally wider than the access walkway that is used both for securing and loading a vessel.

**Tie-up area** means the water adjacent to a dock, boat ramp, boat lift, davit, or boathouse designed to be occupied by moored watercraft.

**Water body** means any artificial or natural depression in the surface of the earth that is inundated with daily tidal flows, and all adjacent wetlands as defined in § 14-293.

- (1) *Artificial water bodies* are man-made canals and similar water bodies that extend natural water bodies into uplands.
- (2) *Natural water bodies* include the Gulf of Mexico, Matanzas Pass, Estero Bay, Ostego Bay, Buccaneer Lagoon, and similar water bodies that were created by natural geophysical forces.

**Watercraft** means any vehicle designed for transporting persons or property on, in or through water.

**Work** includes, but is not limited to, all dredging or disposal of dredge material, excavation, filling, construction, erection, or installation, or any addition to or modification of a structure on a water body.

*Cross reference(s)—Definitions and rules of construction generally, § 1-2.*

**Sec. 26-42. Reserved.**

**Sec. 26-43. Applicability.**

- (a) This article describes the only non-governmental marine structures that may be constructed within the "Tidal Waters" designation on the comprehensive plan's future land use map.
  - (1) The marine structures described in this article may be permitted only within riparian extensions of property lines or on owned or leased submerged lands.
  - (2) These marine structures must be related to accessory uses that are allowed in conjunction with a permitted principal use on the adjoining land. See § 34-1171 through 34-1174 for general regulations on accessory uses.



(b) The terms and provisions of this article shall apply to the incorporated area of the Town of Fort Myers Beach.

**Sec. 26-44. Compliance with other applicable regulations.**

Permits issued in accordance with this chapter, or development orders for work in the town, do not eliminate the need to obtain all applicable state and federal agency permits.

**Sec. 26-45. Permits required.**

(a) A permit is required prior to starting any work addressed by this article, except where explicitly stated otherwise.

(b) Permit applications must be submitted to the director on an appropriate form containing the following:

- (1) The names, addresses, and telephone numbers of the property owner(s);
- (2) The name, address, and telephone number of the property owner's agent, if applicable;
- (3) Written authorization from the property owner to the agent, if applicable;
- (4) The property street address;
- (5) The property STRAP number;
- (6) A site plan, showing the following:
  - a. the proposed location of the work relative to riparian property lines; and
  - b. dimensions and side setbacks of all proposed structures or work.
- (7) Copies of all necessary state and federal agency approvals; and
- (8) The appropriate fee.

(c) Work relating to commercial or multi-slip docks may require a development order in accordance with ch. 10 and construction drawings sealed by a professional engineer or registered architect. All development order applications will be reviewed for compliance with this article.

(d) The director has the discretion to require construction drawings sealed by a professional engineer or registered architect and a sealed boundary or record survey identifying the property boundary or riparian extensions into the water body in relation to construction or work. The director also has the discretion to require submission of a sealed post-construction as-built survey certified to the

town prior to issuance of a certificate of completion for any permit under this section.

(e) The director may conduct on-site inspections to determine if the proposed work or structure meets the required minimum standards.

(f) A permit is required to replace an existing structure; however, ordinary minor repairs may be made without a permit to the extent allowed by § 6-111 of this code.

(g) The director can authorize minor design alterations necessary to comply with the Americans with Disabilities Act.

(h) Permit approvals granted under this section will be based upon the information submitted by the applicant. An approval under this section does not constitute a legal opinion regarding the riparian rights boundaries of the subject property or adjacent property and may not be used to substantiate a claim of right to encroach into another property owner's riparian rights area.

**Sec. 26-46. Variances.**

Requests for variances from the terms of this article shall be administered and decided in conformance with the requirements for variances which are set forth in ch. 34.

**Sec. 26-47. Exemption from setback requirement.**

Any structure permitted under this article shall not be subject to the water body setback requirements from a bay, canal or other water body set out in ch. 34.

**Sec. 26-48. Nonconforming marine structures.**

Except where prohibited for boathouses by § 26-74(d) and for seawalls by § 26-77, a nonconforming marine structure may be repaired, replaced, or altered if:

- (1) the size, dimensions, design, and location of the structure is and will remain otherwise in compliance with all existing regulations; or
- (2) the proposed work will not cause an increase in the nonconformity, in the opinion of the director.

**Secs. 26-49--26-70. Reserved.**